

Panaji, 21st July, 2008 (Ashada 30, 1930)

SERIES II No. 16



OFFICIAL GAZETTE

GOVERNMENT OF GOA

SUPPLEMENT

GOVERNMENT OF GOA

Department of Labour

Notification

No. 28/01/2008-LAB/635

The following Award passed by the Industrial Tribunal-cum-Labour Court-I, at Panaji-Goa, on 29-04-2008 in reference No. IT/1/97 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

B. S. Kudalkar, Under Secretary (Labour).

Porvorim, 4th June, 2008.

IN THE INDUSTRIAL TRIBUNAL-CUM-LABOUR
COURT-I AT PANAJI

(Before Anuja Prabhudessai, Presiding Officer)

Ref. No. IT/1/97

Workmen rep. by
Secretary, All Goa General
Employees Union,
P. B. No. 9,
Vasco-da-Gama.

... Workmen/Party I

V/s

M/s. Classic Extrusions Pvt. Ltd.,
Kare House,
Near Matropole Cinema House,
P. B. No. 42,
Margao, Goa.

... Employer/Party II

A WARD

(Delivered on this 29th day of April, 2008)

In exercise of the powers conferred by Clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947, the Government of Goa has referred the following dispute for adjudication:

"(1) Whether the action of the management of M/s. Classic Extrusions Pvt. Ltd., Margao, Goa, in terminating the services of the following 23 workmen with effect from 5-11-1996, is legal and justified ?

- | | |
|--------------------------|--------------------------|
| 1 Shri L. P. Gaonkar | 2 Shri G. H. Shelvonkar |
| 3 Shri Y. B. Haldonkar | 4 Shri C. V. Naik |
| 5 Shri C. J. Naik | 6 Shri Tulshidas Naik |
| 7 Shri Inacio Barreto | 8 Shri Francis Cardozo |
| 9 Shri Anthony Carvalho | 10 Shri Vasu Mangji |
| 11 Shri Salvador Mathews | 12 Shri Sahadev Pikulkar |
| 13 Shri Ulhas Karaparkar | 14 Shri Arun Kerkar |
| 15 Shri Rafael Rebello | 16 Shri Arun Salgaonkar |
| 17 Shri Mohan Naik | 18 Shri Manju Gawli |
| 19 Shri Uday Bhagat | 20 Shri Anand Shirodkar |
| 21 Shri Suresh Naik | 22 Shri Gurunath |
| 23 Shri Anthony D'Costa | Manjerkar |

(2) If not, to what relief the workmen are entitled?"

2. On receipt of the said reference IT/1/97 was registered. Notices were issued to both the parties. The Party I (hereinafter referred to as the 'workmen') has filed claim statement at Exb. 6 whereas the Party II has filed its written statement at Exb. 7. The rejoinder of the workmen is at Exb. 8.

3. It is an admitted fact that the workmen were employed with the Party II, which was engaged in manufacturing aluminum collapsible tubes. The workmen have stated that they were earlier enrolled with the Goa Trade and Commercial Workers Union (GT & CWU). The said union had submitted a charter of

demand to the Party II. The Party II neglected to negotiate with the said union on the said charter of demand. Since there was no headway on the charter of demand, the workmen involved in this reference resigned from the said union on 30-9-1996 and joined All Goa General Employees Union on 1-10-1996. Immediately thereafter the Party II issued purported notice of closure dated 30-9-1996. The said notice was actually issued on 5-10-1996, after learning of the change of union by the present workmen. By the said notice the Party II notified its intention to close the factory from 5-11-1996. The workmen had tried to inform the Party II not to resolve to the extreme step of closure and also sought intervention of the conciliation machinery. The conciliation proceeding ended in failure. Upon receipt of the failure report the Government has made the present reference.

4. The workmen have stated that on 5-11-1996 the Party II had issued to each workmen a purported statement of final accounts. It is alleged that no opportunity was given to the workmen to verify the said final accounts. The workmen therefore refused to sign the acquittance roll on the basis of said purported final statement and also refused to receive the cheque. The workmen have stated that they had also learnt, that the Party II had deducted sizable sum of money from their final settlement dues towards payment of their respective dues. It is alleged that the amount which was deducted was not deposited with the bank. The workmen have stated that they have not been paid the dues payable to them upon discharge and as such the retrenchment is vitiated on account of non payment of legal dues. The workmen claim that the termination of their services is bad and illegal.

5. The workmen have further stated that the Party II has not surrendered the factory licence and that after giving the notice of closure it had applied for renewal of licence. It has also purchased an additional modern assembly line machine and diesel generator set. The workmen have stated that production was in full swing up to 5-11-1996 and that in final settlement of account the Party II has declared bonus at the maximum rate of 20%. The workmen have further stated that there is an increase in demand for the product manufactured by the Party II. They have alleged that the closure is sham and pretence and that motive behind is only to harass the workmen for having joined All Goa General Employees' Union. The workmen have further stated that the closure is illegal, unjustified and amounts to illegal lockout. The workmen amended the claim statement in the year 2003 and alleged that the Party II has restarted manufacturing operation on or about 16-2-2002 under name and style "Nilmac Packaging Industries". The workmen have stated that despite the demand of the union the workmen have not been called back to their employment. The workmen have therefore sought re-employment of all workmen concerned in this dispute, with full back wages, seniority and all other consequential benefits.

6. The Party II has filed its written statement at Exb. 7. The Party II has denied that it had decided to

close the factory because of change of union by the workmen. The Party II has stated that till 5-11-1996 it was engaged in business of manufacturing and sale of packaging material namely, aluminum collapsible tubes. It has stated that the Lumina Home Products Ltd., which was its principle buyer of aluminum collapsible tubes switched over to laminated tubes for packaging their products and as a result there was sharp fall in the orders for aluminum collapsible tubes. Consequently the entire working of the company had been rendered uneconomic to the extent of incurring loss of 0.15 lacs per day. There were no alternative buyers for these products and it was under these circumstances that on 2-9-1996 the Board of Directors of the company resolved to close the undertaking w.e.f. 5-11-1996. Pursuant to the said resolution, requisite notice for 60 days in Form Q was given to the Government of Goa in terms of Sec 25 FFA and all the workers including the workmen were given one month's notice as required under Section 25 FFA of the Industrial Disputes Act. The workmen were asked to collect their working dues on 5-11-1996 between working hours. Similarly, all the workers including the workmen were asked not to remain present in the premises during the notice period on account of non-availability of work. The Party II has stated that all the legal dues under the provisions of Industrial Disputes Act were tendered unconditionally to all the workmen. The Party II has stated 45 workers including 5 workmen, namely, C. Shelvonkar, C. V. Naik, C. J. Naik, Inacio Barretto, A. D'Costa received the dues tendered however the remaining workmen acting under the dictates of the union refused to receive the dues tendered ostensibly to extort more money from the company by adopting coercive tactics. The Party II has denied that the production was in full swing and that the workers worked to their full level. The Party II has stated that the termination of service of the workmen has been effected on the closure of the undertaking and the closure is real and genuine and that the workers are not entitled for any relief. Subsequent to the amendment of the claim statement, the Party II filed additional written statement at Exb. 18. The Party II has denied that it has restarted manufacturing operation in the establishment since 16-2-2005 under the name and style of M/s. Nilmac Packaging Industries. The Party II has stated that subsequent to the closure the company transferred ownership of the shed along with machinery lying therein to a third party by way of sale and that it has no relation whatsoever with M/s. Nilmac Packaging Industries.

7. Based on the aforesaid pleadings following issues were framed:

1. Whether the Party I proves that termination of the services of the workmen named in the reference amounts to illegal lay off or illegal lock out ?
2. Whether the Party I proves that the termination of the services of the workmen named in the reference w.e.f. 5-11-96 is illegal, unjustified and bad in law ?

- 3 Whether the Party II proves that its undertaking at Margao Industrial Estate is closed with effect from 5-11-1996 after complying with the provisions of the I. D. Act, 1947 ?
- 4 Whether the workmen are entitled to any relief ?
- 5 What Award?

ADDITIONAL ISSUE

- 2-A Whether the Party I proves that the Party II has re-started the manufacturing operations from 16-2-2002 under the name and style of "Nilmac Packaging Industries" and by not calling back the Party I workmen for employment inspite of the demand made by the union, the Party II has violated the provisions of the I. D. Act, 1947 ?

8 In support of their claim the workmen have examined Shri Anand Betkekar, General Secretary of the union and Shri Francis Xavier Cardozo one of the workmen involved in the reference. The Party II has examined its Finance Manager, Shri Nagraj Utagi.

9. Learned advocate, Shri T. Pereira has argued on behalf of the workmen. He has argued that the closure notice was issued only with an intention of penalizing the workman for joining the union of their choice, and that the notice of closure was malafide. He has further argued that there is no proof to show that the factory had to be closed down due to recession. He has further argued that the Party I had not surrendered its licence and has infact restarted the factory under a different name. He has further argued that there is no evidence to show that the ownership of the factory has been changed. He has argued that there was no real closure and the closure is sham and that the workmen are entitled for re-employment. He has further argued that the Party II had deducted the amount payable by the workmen towards loan installment/premium and that the amount so deducted has neither been deposited in the bank nor refunded to the workmen and that the closure is also bad for non payment of legal dues.

10. Learned advocate G. B. Kamat has advanced arguments on behalf of the Party II. He has argued that the witnesses examined by the Party I have admitted that the factory has been closed since 5-11-1996. He has argued that the reason for closure is not material and what is relevant is whether the closure is real or sham. In support of this contention he has relied upon the decision reported in 1969(1) ILJ 242. He has further argued that surrendering the licence is immaterial since the evidence adduced by the workmen shows that no business activity was going on in the factory premises. He has also argued that there is no evidence to show that the company had changed the name or that it is carrying on business under a different name. He has further argued that no dispute regarding the re-employment was referred to the Tribunal and hence cannot entertain the same.

11. I have perused the records and considered the arguments advanced by the respective parties. It is an admitted fact that the workmen were employed with the Party II which was engaged in manufacturing aluminum collapsible tubes. The evidence on record clearly indicates that in terms of the provisions of Section 25 FFA of the Industrial Dispute Act, the Party II had served notice dated 5-9-1996 (Exb. 3) on the appropriate Government stating its intention to close down the factory w.e.f. 5-11-96. The reasons for the intended closure were also specified in the annexure to the notice. It is also admitted by the workman that notice dated 25-9-96 Exb. E-5 were displayed on the notice board stating that the factory would be closed w.e.f. 5-11-96. Notice of closure (Exb. E-6 colly) was also served on the workmen and they were called upon to collect final settlement dues on 5-11-96 between 10.00 p.m. to 5.00 p.m. The witness No. 2, Shri Francis Xavier Cardozo who is one of the workmen has also stated that the management had undertaken to pay the dues of the workers and that the statement showing the names of the workmen and the amount to which they were entitled to put up on the notice board.

12. It is thus clear that the Party II had complied with the requirements of closure under Sec. 25FFA and 25FFF of the Industrial Dispute Act. The dispute however is to the genuiness of the closure. The workmen have claimed that the closure is sham, pretense and is infact illegal layoff or, lockout whereas the Party II had claimed that the closure is genuine and bonafide.

13. In view of the contentions raised by the respective parties, it is necessary to refer to the definition of the terms 'layoff, lockout & closure' and decide whether the action of the Party II amounts to layoff, lockout or closure. The term lay off has been defined in Sec. 2 (kkk) of the Act as meaning the failure, refusal or inability of an employer on account of shortage of coal, power or raw material and accumulation of stocks in the breaking down of machinery or for any other reason to give employment to a workman whose name is borne on the muster roll of his industrial establishment and who has not been retrenched.

The term 'lock out' is defined u/s 2(1) as meaning the closing of a place of employment or to suspension of work, or the refusal by an employer to continue to employ any number of persons employed by him.

Whereas 'closure' as defined u/s 2(cc) means the permanent closing down of a place of employment or part thereof.

14. In the case of General Labour Union, Bombay v/s B. V. Chavan Lab I. C. reported in 1985, 728.

"While examining whether the employer has imposed a lockout or has closed the industrial establishment, it is not necessary to approach the matter from this angle that the closure has to be irrevocable, final and permanent and that lockout

is necessarily temporary or for a period. The employer may close down industrial activity bonafide on such eventualities as suffering continuous loss, no possibility of revival of business or inability for various other reasons to continue the industrial activity. There may be a closure for any of these reasons though these reasons are not exhaustive but are merely illustrative. To say that the closure must always be permanent and irrevocable is to ignore the causes which may be necessitated closure. Change of circumstances may encourage an employer to revive the industrial activity which was really intended to be closed. Therefore the true test is that when it is claimed that the employer has resorted to closure of industrial activity, the industrial court in order to determine whether the employer is guilty of unfair labour practice must ascertain on evidence produced before it whether the closure as a device or pretence to terminate services of workmen or whether it is bonafide and for reasons beyond the control of the employer. The duration of the closure may be a significant fact to determine the intention and bonafides of the employer at the time of closure but is not decisive of the matter.... Therefore the correct approach ought to be that when it is claimed that the employer is not guilty of imposing a lockout but has closed the industrial activity, the industrial court before which the action of the employer is questioned must keeping in view all the relevant circumstances at the time of closure decide and determine whether the closure decide and determine whether the closure was a bonafide one or was a device or a pretence to determine the services of the workmen."

15. Reverting to the facts of the present dispute the workmen had claimed that the Party II had issued a notice of closure as the workmen had joined All Goa General Employees Union. In this context the witness No. 1, Shri Anand Betkekar, General Secretary of All Goa General Employees Union. He has deposed that vide letter dated 14-5-96 Exb. W-1 eight other employees had informed that they wanted to be the members of All Goa Employees Union. The copy of the said letter was sent to the Labour Commissioner and the Party II. By letter dated 18-5-1996 (Exb. W-2) the vice-president of the union had informed the Party II that its employees had joined the Union. He has deposed that the workmen involved in this reference were earlier the members of Goa Trade & Commercial Workers Union. They resigned from the said union by letter dated 30-9-1996 (Exb. W-3) and by letter dated 1-10-1996 (Exb. W-4) they became the members of All Goa Employees Union. He had stated that the union had informed the management of the Party II that the workmen had become the members of the union and thereafter on 5-10-96 the Party II put up a notice dated 30-9-96 on the notice board, stating that the factory would be closed from November 1996. He has stated that the Party II had closed the establishment because the workers had become the members of the union.

16. The witness No. 2, Shri Francis Xavier Cardozo who is also one of the workmen involved in the reference has deposed that the workmen were members of Goa Trade & Commercial Workers Union. He has stated that the said union had submitted the charter of demand dated 21-5-96, at Exb. W-8 to the Party II. He has further stated that since there was no response from the Party II, reminder dated 17-7-96 (Exb. W-9) was served on the Party II. He has deposed that the Goa Trade & Commercial Workers Union was not taking any interest in the charter of demands and as such the workmen decided to resign from the union and this decision was conveyed to the General Secretary of the union vide letter dated 30-9-96 (Exb. W-10). He has stated that the copy of the said letter was also sent to the Deputy Labour Commissioner and to the Managing Director of the Party II. He has further deposed that by letter dated 1-10-96 (Exb. W-11) the workmen informed the General Secretary of All Goa General Employees Union (CITU) that they intend becoming members of the said union. A copy of the said letter was also sent to the Deputy Labour Commissioner, Margao as well as Managing Director of the Party II. He has deposed that on receipt of the said letter dated 1-10-96 at Exb. W-11 of the Party II put up a closure notice on the notice board dated 28-9-96 wherein it was stated that the factory would be closed with effect from 5-11-96. He has stated that though the Party II had put up a notice that the factory would be closed from 5-11-96 the Party II had not closed the factory. He has further stated that the Party II had renewed the licence bearing No. 182 w.e.f. 22-10-96 and that electricity in the factory and water connection as well as telephone connection was maintained at the factory. He has further stated that the Party II continued to make payment on octroy as well as excise duty.

17. It is to be noted that the Party II has denied that it had served notice of closure because the workmen had joined the union All Goa General Employees Union (CITU). The Party II had stated that the Lumina Home Products Ltd., which was the principle buyer of aluminum collapsible tubes had switched over to laminated tubes for packaging their products as a result there was a sharp fall in the orders for supply of aluminum collapsible tubes and the entire working of the company had been rendered uneconomical and under the circumstances the board of directors had resolved to close down the undertaking w.e.f. 5-11-96. In support of this contention the witness, Shri Nagraj Utagi, the Finance Manager of the Party II has deposed that the Party II was engaged in the business of manufacturing aluminum collapsible tubes of packaging toothpaste vanishing cream etc. He has deposed that the packaging concept was changed i.e. laminated tubes were being used in place of aluminum collapsible tubes. In view of this change the board of directors had passed a resolution dated 2-9-96 Exb. 2 wherein it resolved to close down the factory. Pursuant to this resolution, notice of closure at Exb. E-3 and E-4 colly were given to the various authorities. Besides a notice, was also displayed on the notice board that the factory would be closed from 5-11-96. In his cross examination he has stated that

the aluminum collapsible tubes manufactured by the Party II were mainly used for packaging toothpaste vanishing cream and only 10% were used for packing other items. He has further stated that Lumina Home Products was the sole customer of the Party II. He has further stated that after termination of the contract by the Lumina Home Products the Party II did not venture for other customers as the price offered by them was uneconomic.

18. From the aforesaid evidence it is clear that the workmen to this reference were earlier the members of Goa Trade & Commercial Workers Union. They had resigned from the said union vide letter dated 30-9-96 Exb. W-3 and joined All Goa General Employees Union vide letter dated 1-10-96 Exb. W-4. It is to be noted that the evidence of the witness, Shri Nagraj Utagi vis-à-vis the resolution at Exb. E-2 indicates that in the meeting held on 2-9-1996, the board of directors had resolved to close the factory. The Party II had also given the notice of closure Exb. E-3 to the Government on 5-9-96. It is thus evident that the decision to close the factory was taken much before the workmen had joined All Goa General Employees Union and as such the decision to close down the factory could not have been taken because of the change of the union by the workmen involved in this reference. Though the material on record, more particularly the documents at Exb. W-1 & W-2 show that eight other employees had joined the union on 14-5-1996, there is nothing on record to indicate that change of the union by these eight employees or the activities of the union had created such situation that the Party II had to pull down the shutters as a means of reprisal or as an instrument of coercion or as a mode of exerting pressure on the employees. This being the case there is no substance in the contention of the workmen that the decision to close the factory was taken because of the change of union or that the closure was malafide.

19. The resolution at Exb. E-2 also indicates that the decision to close the factory was taken because of increase in the cost of raw material, wages and overhead coupled with reduction of the selling price by Lumina Home Products and further curtailment of orders consequent to luminas changing over to laminated collapsible tubes. The reasons given by the Party II in the notice Exb. E-3 which was served on the appropriate Government was also that Lumina Home Products, the principle buyer of aluminum collapsible tubes had switched over to laminated tube for packaging their products and as a result there was a sharp fall in the orders for the supply of aluminum tube and the entire working of the undertaking had been referred uneconomical. It is to be noted that the workmen witness, Francis X. Cardozo has also admitted in his cross examination that Lumina Home Products which was giving orders to the Party II had started giving orders to another factory which is running in full swing. This statement also fortifies the contention of the Party II that the Lumina Home Products who was its principle buyer had terminated its contract with

the Party II and that the running of the factory had become uneconomical. Consequently the closure cannot be said to be pretence or sham.

20. The workmen, Shri Francisco deposed that the company had got the licence renewed till 22-10-1996. He has stated that the Party II had also retained the electricity and telephone connection and that it was paying octray as well as excise duty. Shri Nagraj Utagi, the witness of the Party II has admitted that the Party II had not surrendered the factory licence and that it had also retained electricity and telephone connection. He has deposed that the Party II had informed the Excise and Sales Tax Department the union was closed down and that there was no production activity. He has explained that unless the assessment are computed and demands of the Excise and Sales Tax Department are finalized, the registration cannot be cancelled. In the light of this explanation the closure cannot be held to be sham merely because the licence was not surrendered or because the water, electricity and telephone connections were not disconnected.

21. It is also pertinent to note that the factory was closed down with effect from 5-11-96. The witness No. 1, Shri Anand Betkikar, the General Secretary of the All Goa General Employees Union had admitted in his cross examination which was recorded on 6-12-99 that the factory of the Party II was closed since 5-11-96 and that nobody was working in the said factory. Similarly, the witness No. 2, Shri Francis X. Cardozo whose cross examination was recorded on 30-3-00 has also admitted that the factory of the Party II was permanently closed from 5-11-96. This evidence sufficiently proves that no business activity was going on in the factory from 5-11-1999 though the workmen had amended the claim statement and stated that the Party II had restarted the factory from 16-2-02 under the new name M/s. Nilmac Packaging Industries Ltd., the workmen has not adduced any evidence to prove that the Party II had changed its name to M/s. Nilmac Packaging Industries or that all or some of the directors of Party II are also directors of M/s. Nilmac Packaging Industries. This being the case the Party I has failed to prove that the Party II is running the same factory under a new name.

22. Be that as it may, the closure cannot be held to be a pretence or sham merely because the business is restarted. The decision in the case of General Labour Union (Supra) makes it crystal clear that the closure need not necessarily be perpetual, final or irrevocable. Subsequent change in circumstances leading to closure may make it possible to restart to business. Hence what is relevant is whether at the time of closure the employer had bonafide intention of closing down the business or whether it was only a pretence. As stated earlier, the workmen have failed to prove that the closure was aimed at penalizing the workmen for changing the union or that it was malafide. On the contrary the evidence and record indicates that change in packaging concept and termination of contract by luminas had rendered running of the business uneconomic and this had

necessitated the Board of Directors to resolve to close down the factory. The closure was conditions by business exigencies and it was not a cloak for layoff or lock-out.

23. The Party I has also challenged the closure on the ground of non-payment of legal dues. It is alleged that though sizable amount was deducted from the final settlement dues of the workmen towards payment of their respective bank loan, the said amount was not deposited in the bank. It is stated that money which was due and payable to the workmen was not paid to or tendered to/paid on account of the workmen. In this context, Shri Francisco Cardozo has deposed that he had obtained loan from the Goa Urban Co-operative Bank, Margao for the purpose of house repairs and that he had authorized the management of the Party II to deduct certain amount from his salary every month towards the repayment of the loan amount. He has deposed that at the time of the closure the loan amount of Rs. 3000/- was outstanding. He has deposed that in the final statement of the dues payable to him showed that the balance loan amount was paid to the bank from the dues payable to him however no such amount was paid to the bank. He has deposed that he had received a letter from the bank to pay the loan amount and that he had paid the loan amount to the bank. He has produced the statement of account at Exb. 12. He has deposed that similar deductions were shown in the final statement of some other workmen who had authorized the Party II to deduct loan installment from their salaries and that the amount which was so deducted from the final dues was not paid to the bank. He has produced statements in respect of loan account of Anthony Carvalho, Vasu Mangji, Arun Salgaonkar, Gurunath Mandrekar which are at Exb. 13 colly. It is to be noted that Shri Nagraj Utagi, the Finance Manager of the Party II has explained in the cross examination that as per the instructions received from the bank certain amount was deducted from the salary of the workmen towards payment of loan amount and that the amount so deducted was shown in the final settlement account of the concerned workmen. He has deposed that only when the workmen had accepted the statement of final settlement the amount shown as deducted was remitted to the bank. He has deposed that some of the workmen had not accepted the statement final settlement and that the deductions shown in the statement of these workmen were not remitted to the bank. This explanation is not challenged by the workmen and in view of this it cannot be said that the Party II had failed to pay to the workmen their legal dues.

24. It is also to be noted that the evidence of the workmen indicates that the management had undertaken to pay dues of all the workmen and the statement of the final dues payable to the statement of the final dues payable to the workmen was displayed on the notice board. The evidence of Nagraj Utagi also indicates that out of 63 employees, 45 employees had collected their dues. He has also deposed that the dues payable to the other employees who had not collected the dues were sent by cheque at their respective residential addresses. This statement is not disputed by

the workmen. Infact the witness, Francis Cardozo who is one of the workmen, has admitted that he had not collected his dues. He has stated that he had not collected the dues as the notice of closure was not proper and further, he had to collect the dues he would not get the job with Party II. The evidence on record therefore clearly proves that the management had not only offered to pay but had infact paid legal dues to most of the workmen, merely because some of the workmen had refused to accept the dues it cannot be said that the Party II had failed to comply with provisions of Sec. 25 FFF(1) or that the termination is bad and illegal for non-payment of legal dues.

25. Be that as it may, another question which needs to be addressed is whether non-payment of dues renders the termination illegal or invalid. In the case of Avon Services v/s Industrial Tribunal reported in 1979(1) ILJ, the apex court reiterated the principles laid down by the constitution bench in the case of M/s. Hathisingh Mfg. Co. Ltd., and others v/s Union of India and others (1960) 3 SCR 528, wherein it was held that "the legislature has not sought to place closure of an undertaking on the same footing as retrenchment u/s 25 F. By Sec. 25 F, a prohibition against retrenchment until the conditions prescribed by that section are fulfilled, is imposed, by Sec. 25 FFF(1) termination of employment on closure of the undertaking without payment of compensation and without either serving notice or paying wages in lieu of notice is not prohibited. Payment of compensation and payment of wages for the period of notice are not therefore conditions precedent to closure". It is thus clear that the workmen cannot challenge closure on the ground of non-payment of dues.

26. Under the circumstances and in view of discussion supra, the workmen have failed to prove that the closure is sham, pretense or that it amounts to illegal lay off or lock out. The Party II has proved that the factory was closed w.e.f. 5-11-1996 after complying with the provisions of the Industrial Disputes Act. There is no evidence on record to prove that the Party II has restarted the factory under a new name. The closure is real and genuine and as such termination of services of the workmen cannot be said to be illegal or unjustified. Consequently the workmen are not entitled for any relief. This being the case issues 1, 2, 2A & 4 are answered in the negative and issue No. 3 is answered in the affirmative. Hence I pass the following order.

ORDER

It is hereby held that the closure is genuine and real. The termination of services of the workmen w.e.f. 5-11-96 is legal and justified. It is further held that the workmen are not entitled for any relief.

No order as to costs. Inform the Government accordingly.

Sd/-

(A. Prabhudessai),
Presiding Officer,
Industrial Tribunal-
-cum-Labour Court-I.

Notification

No. 28/01/2008-LAB/655

The following Award passed by the Industrial Tribunal-cum-Labour Court-I, at Panaji-Goa, on 25-04-2008 in reference No. IT/8/05 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

B. S. Kudalkar, Under Secretary (Labour).

Porvorim, 9th June, 2008.

IN THE INDUSTRIAL TRIBUNAL-CUM-LABOUR
COURT-I AT PANAJI

(Before Anuja Prabhudessai, Presiding Officer)

Ref. No. IT/8/2005

Shri Amarnath Suryavanshi,
Matru Krupa Nivas,
Mollem Re-Colony,
Sanquelim Goa.

... Party I/Employer

V/s

M/s. Proctor and Gamble
Hygiene and Care Ltd.,
Plot No. 173, GDDIDC,
Kundaim Industrial Estate,
Kundaim Ponda, Goa.

... Party II/Workman

Workman/Party I Absent.

Employer/Party II is represented by Adv. G. K. Sardessai.

A WARD

(Delivered on this 25th day of April, 2008)

In exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947. The Government of Goa had referred the following dispute to this Tribunal for adjudication:

"(1) Whether the action of the management of M/s. Proctor & Gamble Hygiene & Health Care Limited, Kundaim Industrial Estate, Kundaim, Goa, in terminating the services of Shri Amarnath Suryavanshi, Technician with effect from 30-7-2004, is legal and justified ?

(2) If not, what relief the workman is entitled to ?"

2. On receipt of the reference IT/8/2005 was registered. Notices were issued to both parties. The Party I has filed his claim statement at Exb. 5. He has stated that he had worked for Party II for about 8 years and that the Party II had terminated his services on 30th July, 2004 on the alleged ground of misconduct.

The Party I has stated that the charges levelled against him are frivolous and that his dismissal is illegal and arbitrary. The Party I has stated that the problem started with his service in the year 2003 as the Assistant Manager (Human Resources) made allegations that he had tampered with leave record of the company and he had remained unauthorisedly absent. The Party I stated that he was called in the conference room wherein Mr. R. D. Gupta, Immediate Manager, Mr. Yashpal and Suryakant Rai were present. He was asked series of questions and was asked to sign some papers. The Party I has stated that he had blindly signed the said papers as he was in confused state of mind. The Party I has stated that he was served with letter dated 7-1-2004, whereby he was reverted to the post of Technician. No show cause notice was issued to him and no inquiry was conducted. The Party I has stated that the action of the Party II was in violation of principles of natural justice.

3. The Party I has stated that he was insulted and humiliated and was not given any assignments of work. He was prevented from joining his duties and in order to create evidence against him, letters were issued asking him to join duties. The Party II initiated disciplinary proceedings against him which were biased and in breach of principles of natural justice. The Party I stated that entire enquiry was a mere force and on the basis of the report submitted by the Inquiry Officer the Party II issued show cause notice and thereafter terminated his services. The Party I has stated that his termination is illegal, arbitrary and malafide. The Party I had raised dispute and conciliation proceedings held by Assistant Labour Commissioner, Ponda had failed. The Party I has stated that the termination is illegal and unjustified and that he is entitled for reinstatement with full back wages with continuity in service.

4. The Party II has filed its written statement at Exb. 6. The Party II has stated that the Party I was appointed as Technician on 3rd June, 1996. The Party I was issued a charge sheet for tempering with leave records. The Party I had admitted the charges levelled against him and as such he was demoted vide order dated 7th June, 2004 and he was advised to report to work on 19th January, 2004. The Party II stated that the Party I failed to report to work as directed. The Party I had not applied for any leave nor was any leave granted to him. Several letters were issued to him for joining his duties despite which the Party I failed to join duties and remained unauthorisedly absent. He was served with charge sheet for absenteeism which is misconduct under the model standing orders certified by the company. Enquiry was conducted by an impartial and competent Inquiry Officer. The Party I was given every conceivable opportunity to participate and present his case during the inquiry. After conclusion of the enquiry the Inquiry Officer submitted his findings and held the Party I guilty of charges levelled against him. The management concurred with the findings and considering the past service record and the gravity of the proved misconduct decided to dismiss the Party I from service. Accordingly

show cause notice was issued to the Party I and the Party I was dismissed from service by dismissal order dated 30th July, 2004. The Party II has stated that dismissal is legal and that the Party I is not entitled for any relief.

5. On the basis of pleadings followings issues were framed:

- 1 Whether there is Industrial Dispute between Party I and Party II ?
- 2 Whether Party I was prevented by Party II from joining his duty ?
- 3 Whether inquiry held against Party I is illegal, unfair and in violation of principles of natural justice ?
- 4 Whether action of Party II in terminating service of Party I is legal and justified ?
- 5 Whether Party I is entitled to relief 's as prayed for ?
- 6 What Award ?

6. The records indicate that the Party I has failed to appear before the Tribunal from 18-7-06. The Party I had challenged the action of Party II in terminating his services and the reference was made in view of dispute raised by the Party I. This being the case the Party I was bound to prove the contention raised by him. However, the Party I has not adduced any evidence to support his contention that the enquiry held is not fair and proper and is in violation of principles of natural justice and that termination of his services is illegal and unjustified and arbitrary. In the absence of such evidence the Party I is not entitled for any relief. Hence I pass the following order.

ORDER

It is hereby held that the termination of services of Party I w.e.f. 30-7-2004 by the Party II is legal and justified. The Party I is not entitled for any relief.

No order as to costs.

Inform the Government accordingly.

S/-
(A. Prabhudessai),
Presiding Officer,
Industrial Tribunal-
-cum-Labour Court-I.

Notification

No. 28/01/2008-LAB/655

The following Award passed by the Industrial Tribunal-cum-Labour Court-I, at Panaji-Goa, on 22-05-2008 in reference No. IT/42/02 is hereby published

as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

B. S. Kudalkar, Under Secretary (Labour).

Parvorim, 9th June, 2008.

IN THE INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-I AT PANAJI

(Before Anuja Prabhudessai, Presiding Officer)

Ref. No. IT/42/2002

Workmen rep. by

Goa Trade & Commercial Workers Union,
Velho Building, 2nd Floor,
Panaji, Goa.

... Workmen/Party I

V/s

M/s. ACI Engineering Division A/4,
Corlim Industrial Estate,
Corlim, Ilhas, Goa.

... Employer/Party II

Party I/Workmen represented by Adv. Suhas Naik.

Party II/Employer represented by Adv. G. B. Karat.

A AWARD

(Passed on this 22nd day of May, 2008)

In exercise of powers conferred on it by Section 10(1)(d) of the said Act, 1947, the Government of Goa vide order dated 9-7-2002 has referred the following dispute to this Tribunal for adjudication:

"(1) Whether the action of the management of M/s. ACI Engineering Division, Corlim, Goa, in terminating the services of the following workmen w.e.f. 26-11-2001, is legal and justified ?

- 1 M. H. Kamblis, Operator
- 2 S. N. Shirodkar, Operator
- 3 Yadoo Gaude, Operator
- 4 Jayant D. Nadkarni, Operator
- 5 Conceicao Fernandes, Operator
- 6 Manisha Phadte, Operator
- 7 Shobha Haldankar, Operator
- 8 Deepa Naik, Operator
- 9 Usha Chari, Operator
10. Ankush Gaude, Operator
11. Shashikant, Operator
12. Premanand Palekar, Operator
13. Harishchandra Kerkar, Operator

(2) If not, to what relief the workmen are entitled?"

2. On receipt of the reference IT/42/2002 was registered and notices were issued to both parties.

The Party I has filed his claim statement at Exb. 4. The Party I has stated that on 19-11-01 the union had raised an Industrial Dispute in the matter of non-settlement of charter of demands by the management of Party II. The matter was pending for conciliation despite which the Party II declared lockout w.e.f. 26-11-01, without giving any prior notice and compensation to the workmen named in the reference. The said lock out is illegal and is in violation of provisions Sec. 22 (2)(b) and 33 of Industrial Dispute Act. The Party I raised an Industrial Dispute challenging the illegal lockout imposed by the management. The Party I has stated that the closure has been enforced to escape the financial liability arising out of pending charter of demands. The Party I has stated that after closing the factory the entire machinery is shifted to other factory at Madkai and Priol and manufacturing activity is going on in these factories by recruiting new workers. The Party I has therefore prayed that the closure as well as termination of service of the workman held to be illegal and unjustified. The Party I has also sought to direct the Party II to lift the closure and reinstate all the workmen with full back wages and continuity in service.

3. The Party II has filed its written statement at Exb. 5. The Party II has stated that the union has no locus standi to sponsor the dispute. The Party II has stated that on account of lack of orders and resultant losses coupled with accumulation of indisposed stock, steep increase in labour charges, the entire working of the factory had become uneconomical. The management therefore decided to reorganize the working of the establishment and after redistribution and re-organization of the work, the services of the two employees were found to be surplus. The management therefore terminated services of Miss Rohini Gaude and Ms. Deepika Naik from 14-11-01 on unconditional payment/tender of the legal dues. The Party II has stated that it was unable to serve the demands raised by the union as the same were exorbitant and it was unable to concede to the demands due to its weak financial conditions. The Party II has stated that as a pressure tactics, the workman started slitting/cutting bottles/containers which were being manufactured. On 16-11-01 the Party II received an oral message from M/s. Ciba that 32,000 bottles supplied to it were found leaking and were returned to the Party II thereby causing loss of Rs. 64,000/- to the Party II. The Party II stated that since this act of sabotage was directly referable to the pressurizing tactics of the workmen and in order to prevent any further incidents endangering environment and human life, it was compelled to close its establishment w.e.f. 20-11-01 and accordingly the services of the workmen were terminated on payment of notice pay and compensation, due to each of the workmen. The Party II had denied that the closure is illegal and unjustified and that it has violated the provisions of Industrial Disputes Act.

4. The following issues were framed:

- 1 Whether the Party I/Union proves that it has the locus standi/authority to espouse the dispute of the workmen and represent them in the present reference ?
- 2 Whether the Party I/Union proves that the Party II terminated the services of the workmen w.e.f. 26-11-2001 in violation of the provisions of Sec. 25F of the Industrial Disputes Act, 1947 ?
- 3 Whether the Party I/Union proves that the action of the Party II in terminating the services of the workmen w.e.f. 26-11-2001 is legal and unjustified ?
- 4 Whether the Party II proves that Mr. Mohan M. Kambli, Mr. Shivram Shirodkar and Mr. Yadoo Gaude are not workmen within the meaning of Sec. 2(S) of the Industrial Disputes Act, 1947 ?
- 5 Whether the Party II proves that the services of the workmen were terminated w.e.f. 21-11-2001 on account of the closure of the establishment from 20-11-2001 ?
- 6 Whether the Party I is entitled to any relief ?
- 7 What Award ?

5. On 28-7-05 the parties filed a joint application at Exb. 13 stating that they have arrived at an amicable settlement of the dispute as under:

- 1 That the workpersons abovenamed had filed a claim application under No. LCC/46/02 along with 2 other workpersons claiming legal dues due to each of them from the Party II abovenamed on account of termination of their services on account of closure as aforesaid.
- 2 That the Party II abovenamed has paid and all the workpersons abovenamed have received amount due to each of them in full and final settlement of their claim arising out of the termination of their services on account of closure as aforesaid by way of crossed cheques.
- 3 In consideration of the payment as aforesaid and as agreed in the settlement terms filed in said claim application No. LCC/46/02 dated 02-05-2005, Union on behalf of the workpersons agree that termination of their services by the Management of M/s. ACI Engineering Division Party II abovenamed with effect from 26-11-2001 is legal and justified and that the same is in settlement of all their demands, claims including claim for reinstatement with Party II raised under the present reference.
- 4 The Parties therefore pray that no dispute Award may be passed in view of filing of the Settlement terms in said Claim Application No. LCC/46/2002 dated 02-05-2005.

The application at Exb. 13 clearly indicates that the parties have settled the dispute amicably and have

filed the settlement terms in ICC/46/02. In view of this settlement the dispute referred to this Tribunal does not survive. Hence, I pass the following order.

ORDER

It is hereby held that the reference does not survive in view of the settlement arrived at between the parties, as per the application dated 28-7-2005 at Exb. 13.

No order as to costs.

Inform the Government accordingly.

S/-
(A. Prabhudessai),
Presiding Officer,
Industrial Tribunal-
-cum-Labour Court-I.

Notification

No. 28/01/2008-LAB/655

The following Award passed by the Industrial Tribunal-cum-Labour Court-I, at Panaji-Goa, on 23-05-2008 in reference No. IT/6/2002 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

B. S. Kudalkar, Under Secretary (Labour).

Porvorim, 9th June, 2008.

IN THE INDUSTRIAL TRIBUNAL-CUM-LABOUR
COURT-I AT PANAJI

(Before Anuja Prabhudessai, Presiding Officer)

Ref. No. IT/6/2002

Shri Samir Parrikar,
r/o Raghuvansh Apartment,
Sankhali, Goa.

... Workman/Party I

V/s

M/s. Automobile Corp.
of Goa Ltd.,
Honda, Satari, Goa.

... Employer/Party II

Party I/Workman represented by Adv. D. P. Bhise.

Party II/Employer represented by Adv. M. S. Bandothkar.

A AWARD

(Passed on this 23rd day of May, 2008)

In exercise of powers conferred on it by Section 10(1)(d) of the said Act, 1947, the Government of Goa

vide order dated 7-2-2002, has referred to this Industrial Tribunal following dispute for adjudication:

"(1) Whether the action of M/s. Automobile Corp. of Goa Ltd., Honda, Satari, Goa in dismissing Shri Samir Parrikar from services w.e.f. 31-5-2001, is legal and justified ?

(2) If not, to what relief the workman is entitled ?"

2. On receipt of the said reference IT/6/2002 was registered. Notices were issued to the parties. The Party I/Workman has filed his claim statement at Exb. 4. The Party I has stated that he was issued charge sheet on the ground of fraud and other misconduct for which domestic enquiry was conducted. The Inquiry Officer has held him guilty of the charges levelled. On considering this report, the Party II terminated his services.

3. The Party I had stated that there is no evidence to substantiate the charges of fraud and misconduct. The Party I has further stated that the alleged misconduct could not entail extreme termination of services. The Party I had prayed that the termination should be set aside and should be reinstated with all consequential benefits.

4. The Party II filed his written statement at Exb. 6. The Party II has stated that the Party I was in a habit of remaining absent without permission and that in the past penalty was imposed for such misconduct. The Party II stated that the Party I had remained absent from 9-11-98 to 11-11-98 and instead of making proper application for leave he tampered with the documents of the company with an intention of claiming wrongful wages/benefits for the days on which he had not worked and for which he is not entitled to. The Party I was issued a charge sheet for committing such grave misconduct, enquiry was conducted and on considering the findings of the Inquiry Officer, the Party I was dismissed from service. The Party II has denied that the termination is illegal or unjustified and that the Party I is entitled for reinstatement.

5. Based on the aforesaid pleadings the following issues were framed:

- 1 Whether the charges of misconduct levelled against the Party I are proved to the satisfaction of the Tribunal by acceptable evidence ?
- 2 Whether the Party I proves that the action of the Party II in dismissing the Party I from service w.e.f. 31-5-2001 is illegal and unjustified ?
- 3 Whether the Party I is entitled to any relief ?
- 4 What Award ?

6. The matter was posted for evidence however on 19-5-08, both parties filed application at Exb. 12 stating

that the parties to the reference have arrived at an amicable settlement and that the award be passed in terms of the settlement. I have perused the settlement terms at Exb. 12 which are duly signed by the parties. The terms are agreeable to the parties and are in the interest of the workman. I, therefore, accept the contention of the parties and pass the consent award as per the settlement terms dated 19-5-2008 Exb. 12.

ORDER

- 1 It is agreed between the parties that the Management of M/s. Automobile Corporation of Goa Ltd., having its establishment at Honda, Satari, Goa shall pay a sum of Rs. 75,000/- (Rupees Seventy five thousand only) to Shri Samir C. Parrikar by cheque No. 402919 dated 21st April, 2008 drawn on HDFC Bank, Panaji Branch, which shall include all the claims of Mr. Samir C. Parrikar arising out of the present dispute and his employment/termination, including any claims of earned wages, bonus, leave encashment, etc. or any other claim which can be computed in terms of money.
- 2 It is agreed that Shri Samir C. Parrikar shall accept the said amount mentioned in the clause (1) in full and final settlement of all the claims arising out of present reference and arising out of employment/termination of Shri Samir C. Parrikar, including any claim of earned wages, bonus, leave encashment etc., or any other claim which can be computed in terms of money, in complete satisfaction of all the claims including the claim made in the present reference and further confirm that he shall have no claim of whatsoever nature against the company including any claim of reinstatement and/or re-employment.

No order as to costs.

Inform the Government accordingly.

SD/-
(A. Prabhudessai),
Presiding Officer,
Industrial Tribunal-
cum-Labour Court-I.

Notification

No. 28/01/2008-IAB/691

The following Award passed by the Industrial Tribunal-cum-Labour Court-I, at Panaji-Goa, on 02-06-2008 in reference No. IT/86/00 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

B. S. Kudalkar, Under Secretary (Labour).

Porvorim, 17th June, 2008.

IN THE INDUSTRIAL TRIBUNAL-CUM-LABOUR
COURT-I AT PANAJI

(Before Anuja Prabhudessai, Presiding Officer)

Ref. No. IT/86/00

Mrs. Aplon Fernandes,
Near Mata School,
Behind M.P.T. Ground Patrong,
Baina, Vasco-da-Gama, Goa. ... Workman/Party I

V/s

M/s. Port Employees Consumers
Co-op. Society Ltd.,
Vasco-da-Gama, Goa. ... Employer/Party II

Party I/Workman is represented by Adv. Suhas Naik.

Party II/Employer is represented by Adv. A. C. Navelkar.

A WARD

(Passed on this 2nd day of June, 2008)

In exercise of powers conferred under Clause (d) of sub-section (1) of Section 10 of the said Act, 1947, by order dated 24-11-2000, the Government of Goa has referred to this Industrial Tribunal following dispute for adjudication:

"(1) Whether the action of the management of M/s. Port Employees Consumers Co-operative Society Ltd., Vasco-da-Gama, Goa in terminating the services of Mrs. Aplon Fernandes, Packer, with effect from 8-5-1988, is legal and justified ?

(2) If not, to what relief the workman is entitled ?"

2. On receipt of the said reference IT/86/2000 was registered. Notices were issued to both the parties. The Party I (hereinafter referred to as the 'workmen') has filed claim statement at Exb. 4. The Party I had claimed that she was working for the Party II since 1st week of May, 1992, as a Packer. The Party I had claimed that a false charge was levelled against her that she had misappropriated 1 kg. of rice on 7-5-98 and her services were terminated w.e.f. 8-5-1998 without any notice or enquiry. She raised industrial dispute vide letter dated 6-7-1999. The conciliation proceedings ended in failure and on receipt of the report, the Government has made the present reference. The Party has claimed that her termination is illegal and unjustified. The Party I has sought reinstatement with full back wages and continuity in service.

3. The Party II filed its written statement at Exb. 5. The Party II has claimed that the Party I was caught while taking away rice without making payment to the society. The Party II has stated that the Party I was not engaged on regular basis but she was engaged for day-to-day work on weekly payment only when work

was available and as such there was no question of issuing any notice of the charge sheet.

4. Based on the pleadings of the respective parties following issues were framed.

- 1 Whether the Party I proves that the action of the Party II in terminating her services from 8-5-98 is illegal and unjustified ?
- 2 Whether the Party II proves that the Party I is not a "workman" within the meaning of Section 2(s) of the said Act, 1947 ?
- 3 Whether the Party I is entitled to any relief ?
- 4 What Award ?

5. On 2-5-2008 both the parties submitted that they have arrived at an amicable settlement. They have filed consent terms at Exb. 18 which are duly signed by both the parties. These terms are agreeable to both parties and are in the interest of the workmen. In view of the consent terms at Exb. 18, I pass the following order.

ORDER

- 1 It is agreed that Party II shall pay Party I an amount of Rs. 25,000/- (Rupees Twenty five thousand only) in full and final settlement of her claim.
- 2 It is agreed that the Party I shall not claim any other and further amount from Party II, Party I shall also not be entitled for reinstatement in the society.
- 3 The amount of Rs. 25,000/- (Rupees Twenty five thousand only) shall be paid within 30 days of the award of the Hon'ble Tribunal.

No order as to costs.

Inform the Government accordingly.

S/-

(A. Prabhudessai),
Presiding Officer,
Industrial Tribunal-
-cum-Labour Court-I.